

Message Text

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DEPARTMENT PASS TREASURY (COMPTROLLER OF CURRENCY),
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TAGS: EFIN, EEC
SUBJECT: EC BANKING DIRECTIVE AND PROSPECTS FOR FUTURE
COMMUNITY STEPS IN BANKING REGULATION

REFS: (A) BRUSSELS 16968; (B) 74 EC BRUSSELS A-291;
(C) 75 EC BRUSSELS 10266

1. SUMMARY: THE EC BANKING COORDINATION DIRECTIVE,
ADOPTED BY THE FINANCE COUNCIL NOVEMBER 21, IS A FIRST
STEP TOWARDS THE ULTIMATE AIM OF ESTABLISHING A
COMMUNITY-WIDE SINGLE MARKET FOR BANKING SERVICES. IT
LAYS DOWN BROAD PRINCIPLES FOR MEMBER STATE LICENSING
AND REGULATION OF BANKS AND OTHER CREDIT INSTITUTIONS,
AND ESTABLISHES A FRAMEWORK FOR FUTURE DIRECTIVES WHICH
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WILL AIM AT MORE DETAILED HARMONIZATION OF REGULATORY
PRACTICES. AN ADVISORY COMMITTEE OF MEMBER STATE
REGULATORY OFFICIALS IS ALSO ESTABLISHED TO PLAY A KEY
ROLE IN FUTURE STEPS. THE DIRECTIVE ALSO IS THE FIRST
STEP TOWARDS SETTING UP A COMMON REGIME TOWARDS BANKS
FROM OUTSIDE THE COMMUNITY. IT IS ENVISAGED THAT THE
COMMUNITY WILL CONCLUDE AGREEMENTS WITH THIRD COUNTRIES

THAT WILL PROVIDE, ON THE BASIS OF RECIPROCITY, FOR A COMMON REGIME TOWARDS BRANCHES OF BANKS FROM THIRD COUNTRIES. IN THIS CONNECTION THE COMMISSION HOPES THAT THE FOREIGN BANKING LEGISLATION NOW UNDER CONSIDERATION IN THE UNITED STATES WILL TURN OUT SO AS TO PERMIT MUTUALLY LIBERAL TREATMENT. END SUMMARY.

2. AS NOTED IN REF A, THE EC FINANCE COUNCIL OF NOVEMBER 21 FINALLY ADOPTED THE BANKING COORDINATION DIRECTIVE ORIGINALLY PROPOSED BY THE COMMISSION DECEMBER 12, 1974 (REFS B AND C). (ALTHOUGH COMMONLY REFERRED TO BY THIS TITLE, THE DIRECTIVE ACTUALLY APPLIES TO A BROADER RANGE OF FINANCIAL INTERMEDIARIES. IN WHAT FOLLOWS WE USE THE TERM "BANKING" TO REFER TO THIS LARGER CATEGORY.) COPIES OF DIRECTIVE BEING POUCHED TO DEPARTMENT (EUR/RPE-GELBARD). PLEASE PASS TO INTERESTED AGENCIES. (VERSION POUCHED NOT ABSOLUTELY FINAL LANGUAGE.)

3. MISSION OFFICER HAS REVIEWED THE IMPLICATIONS OF THE BANKING DIRECTIVE WITH H. ROBIN HUTTON, EC COMMISSION DIRECTOR FOR FINANCIAL INSTITUTIONS. WE DISCUSSED WITH HUTTON FUTURE DIRECTIONS FOR COMMUNITY ACTION IN THIS AREA, AND POSSIBLE IMPLICATIONS FOR THE INTERESTS OF U.S. BANKS IN EUROPE.

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4. HUTTON NOTED THAT IN PRESENT DIRECTIVE COMMISSION HAD ABANDONED THE IDEA OF TRYING TO DRAFT A COMPREHENSIVE PROPOSAL GIVING RIGHTS OF ESTABLISHMENT AND HARMONIZING IN DETAIL REGULATORY PRACTICES IN MEMBER STATES. THE ULTIMATE AIM REMAINS THE ESTABLISHMENT OF A COMMON MARKET IN FINANCIAL INTERMEDIATION SERVICES THROUGHOUT THE COMMUNITY, BUT THE IDEAL SOLUTION - COMMUNITY LEVEL LICENSING AND REGULATION - IS NOT REALISTIC IN PRESENT OR FORESEEABLE CIRCUMSTANCES. INSTEAD, THE ULTIMATE GOAL IS TO BE APPROACHED IN A SERIES OF DIRECTIVES WHICH WILL GRADUALLY ELIMINATE OBSTACLES TO THE PROVISION OF BANKING (AND OTHER CREDIT INSTITUTION) SERVICES ACROSS NATIONAL BORDERS WITHIN THE EC AREA.

5. THE PRESENT DIRECTIVE IS A MODEST BUT NEVERTHELESS SIGNIFICANT FIRST STEP IN THIS DIRECTION. AS A FRAMEWORK FOR FUTURE, MORE DETAILED DIRECTIVES, IT LAYS DOWN BROAD PRINCIPLES TO GUIDE MEMBER STATE LICENSING AND REGULATION OF EC BANKS (I.E. BANKS WITH HEAD OFFICES WITHIN THE COMMUNITY) AND THEIR BRANCHES WITH PARTICULAR REFERENCE TO BRANCHING ACROSS INTRA-COMMUNITY FRONTIERS. (IN THIS DIRECTIVE THE TERM "BRANCH" IS DEFINED BROADLY TO INCLUDE

ALL LEGALLY DEPENDENT PARTS OF A CREDIT INSTITUTION CONDUCTING SOME OF THE OPERATIONS INHERENT TO THE BUSINESS.) SIMILARLY, IT LAYS DOWN GENERAL PRINCIPLES TO GOVERN LICENSING AND REGULATION OF BRANCHES WITH HEAD OFFICES OUTSIDE THE COMMUNITY. FINALLY, IT ESTABLISHES AN ADVISORY COMMITTEE OF THE AUTHORITIES SUPERVISING CREDIT INSTITUTIONS IN MEMBER STATES.

6. ABSENT ANY PROSPECT FOR A CENTRALIZED COMMUNITY REGULATORY AUTHORITY, THE CONCEPT UNDERLYING THE PRESENT DIRECTIVE IS TO MOVE AWAY FROM THE PRESENT SYSTEM, WHERE EACH MEMBER STATE SUPERVISES ALL CREDIT INSTITUTIONS WITHIN ITS BORDERS OF WHATEVER NATIONALITY

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ACCORDING TO ITS OWN RULES, TOWARDS AN ACCEPTANCE OF THE RESPONSIBILITY OF THE MEMBER STATE OF ORIGIN FOR ALL OPERATIONS OF A BANK THROUGHOUT THE COMMUNITY. IT IS ALSO HOPED TO MOVE TO A SYSTEM UNDER WHICH FREE BRANCHING WOULD BE PERMITTED WITHIN THE COMMUNITY. AT PRESENT, MOST MEMBER STATES DO NOT PERMIT TRUE BRANCHES, BUT REQUIRE A SUBSIDIARY TO BE SET UP POSSESSING ITS OWN CAPITAL BASE, TO ACHIEVE THESE AIMS, HARMONIZED LICENSING AND REGULATORY PRACTICES ARE REQUIRED SO THAT THE HOST COUNTRY CAN HAVE COMPLETE CONFIDENCE IN THE SAFEGUARDS APPLIED BY THE REGULATORY AUTHORITY IN THE COUNTRY OF ORIGIN.

7. THE BROAD PRINCIPLES LAID DOWN IN THE PRESENT DIRECTIVE DO NOT GO VERY FAR. THEY INCLUDE (INTER ALIA):

(A) THE REQUIREMENT THAT PRIOR LICENSING BE REQUIRED OF ALL CREDIT INSTITUTIONS (AIMED AT THE UK, WHICH IS NOW COMMITTED TO IMPLEMENT SUCH A SYSTEM.) (B) BROAD CONDITIONS FOR GRANTING SUCH LICENSES (THIS INCLUDES PROHIBITION THAT "ECONOMIC NEED" BE ESTABLISHED AS A CONDITION, A PROVISION AFFECTING ITALY, IRELAND, AND DENMARK. A LENGTHY TRANSITIONAL PERIOD OF 12 YEARS IS LIMITED OFFICIAL USE

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PROVIDED FOR THIS PROVISION.) (C) LIMITED PROVISIONS TO FACILITATE BRANCHING ACROSS MEMBER STATE BORDERS. (D) PROVISION THAT COMMON OBSERVATION RATIOS BE DEVELOPED TO GUIDE REGULATORS IN THEIR ASSESSMENT OF BANK SOLVENCY AND LIQUIDITY. (THE ORIGINAL COMMISSION DRAFT DIRECTIVE PUT FORWARD ABOUT FIVE OF THESE RATIOS, BUT THEY COULD NOT BE AGREED TO FOR THE TIME BEING, AND WERE DROPPED.)

8. THE NEWLY ESTABLISHED ADVISORY COMMITTEE, MADE UP OF "COMPETENT AUTHORITIES" FROM THE MEMBER STATES, IS TO ASSIST THE COMMISSION IN THE IMPLEMENTATION OF THE DIRECTIVE, AND TO ASSIST IN THE FORMULATION OF NEW PROPOSALS IN THE BANK COORDINATION AREA. NOT MORE THAN THREE REPRESENTATIVES ARE PERMITTED FROM EACH MEMBER STATE. (THE COMMISSION HAD HOPED FOR A MORE EFFICIENT GROUP COMPOSED OF ONE REPRESENTATIVE FROM EACH COUNTRY; MOST WORK WILL PROBABLY BE DONE IN SMALLER WORKING GROUPS UNDER THE PRESENT FORMULATIONS.) MEETINGS WILL BE CONFIDENTIAL.

9. THE SHORT SECTION OF THE DIRECTIVE DEALING WITH BRANCHES OF INSTITUTIONS WITH HEAD OFFICES OUTSIDE THE COMMUNITY HAS BUT THREE PROVISIONS: (1) MEMBER STATES MAY NOT APPLY TO THESE FOREIGN-BASED BRANCHES MORE FAVORABLE TREATMENT THAN GIVEN TO BRANCHES OF MEMBER STATE INSTITUTIONS; (2) THE COMMISSION IS TO BE NOTIFIED OF LICENSES GRANTED TO THIRD-COUNTRY BRANCHES; (3) MOST IMPORTANT, THE COMMUNITY IS AUTHORIZED TO CONCLUDE AGREEMENTS WITH THIRD COUNTRIES WHICH WOULD, ON THE BASIS OF RECIPROCITY, ACCORD TO FOR EIGN-BASED BRANCHES IDENTICAL TREATMENT THROUGHOUT THE COMMUNITY.

10. THESE PROVISIONS WILL THEMSELVES HAVE NO IMMEDIATE LIMITED OFFICIAL USE

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DIRECT IMPACT ON U.S. BANK BRANCHES ON SUBSIDIARIES DOING BUSINESS IN EUROPE. A MORE DETAILED DIRECTIVE

WILL BE FORTHCOMING TO PROVIDE A COMMON POLICY FOR BANKS FROM OUTSIDE THE EC, SO AS TO AVOID DISTORTIONS WHICH WOULD LEAD FOREIGN BANKS TO CONCENTRATE THEIR ACTIVITIES IN CERTAIN MEMBER STATES (AS IS THE CASE FOR LONDON AT PRESENT).

11. HUTTON SAID THAT THE COMMISSION HOPED FOR AS LIBERAL A POLICY AS POSSIBLE TOWARDS BRANCHES OR SUBSIDIARIES ORIGINATING IN THIRD COUNTRIES. HE UNDERLINED, HOWEVER, THE REQUIREMENT FOR RECIPROCITY IN ANY AGREEMENT TO BE CONCLUDED WITH THIRD COUNTRIES. IN THIS CONNECTION HE REFERRED TO THE U.S. LEGISLATION NOW PENDING IN CONGRESS WHICH WOULD REGULATE FOREIGN BANKS IN THE UNITED STATES. THIS LEGISLATION IS OF GREAT INTEREST IN EUROPE, AND WOULD, OF COURSE, HAVE IMPLICATIONS FOR THE RECIPROCAL TREATMENT WHICH WOULD BE PROVIDED U.S. BANKS IN EUROPE UNDER THE COMMUNITY REGIME. UNFORTUNATELY, PENDING APPROVAL OF A MORE COMPREHENSIVE DIRECTIVE IN THIS AREA, THE COMMUNITY COULD NOT NOW ENGAGE IN NEGOTIATIONS. HOWEVER, AT SOME LATER STAGE, AFTER THE DETAILS OF THE U.S. LEGISLATION BECOME CLEARER, THE COMMUNITY MIGHT WISH TO UNDERTAKE A "COLLECTIVE INTERVENTION" REGARDING ITS PROVISIONS.

12. EC COMMISSIONER TUGENHAT, RESPONSIBLE FOR THIS AREA, MADE A SIMILAR POINT TO THE AMBASSADOR IN AN INFORMAL OFF-THE-CUFF REMARK. HE NOTED THAT THE NEW DIRECTIVE WOULD HAVE NO IMMEDIATE IMPACT ON U.S. BANKS IN EUROPE, BUT SAID THAT, IN CASE PENDING U.S. FOREIGN BANKING LEGISLATION TURNED OUT BADLY FROM THE VIEWPOINT OF EUROPEAN BANKS, THE DIRECTIVE WOULD PUT THE COMMUNITY IN A POSITION TO DO SOMETHING ABOUT IT. HE NOTED THE

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FRENCH AND GERMANS WERE PARTICULARLY CONCERNED, BUT
THE BRITISH FAIRLY RELAXED.

13. HUTTON SAID THAT THE PROCESS OF FORMULATION
FUTURE DIRECTIVES ON BANKING REGULATION WOULD BE
PAINFULLY SLOW. VERY LITTLE WAS LIKELY TO BE PRODUCED
IN THE NEXT YEAR OR TWO. THE FIRST DIRECTIVE, POSSIBLY
IN ABOUT TWO YEARS, WOULD SPECIFY A COMMON SYSTEM OF
LICENSING. THIS WOULD BE FOLLOWED BY DIRECTIVES ON
REGULATORY RATIOS MEASURING LIQUIDITY AND SOLVENCY,
AND ON THE REGIME TO BE APPLIED TO BRANCHES FROM
THIRD COUNTRIES. MORRIS

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